

# Exhibit C

Volume 1

Pages 1 - 194

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

IN RE: TFT-LCD (FLAT-PANEL) )  
ANTITRUST LITIGATION. ) NO. C 07-MDL-1827 SI

San Francisco, California  
Monday  
July 22, 2013  
8:45 a.m.

Individual Cases:  
CASE NO. 10-CV-4572  
CASE NO. 10-CV-5452  
CASE NO. 10-CV-4945  
CASE NO. 12-CV-4114

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Best Buy Plaintiffs:

ROBINS, KAPLAN, MILLER & CIRESI LLP  
2049 Century Park East  
Suite 3400  
Los Angeles, California 90067  
BY: ROMAN M. SILBERFELD, ESQ.  
DAVID MARTINEZ, ESQ.  
LAURA E. NELSON, ESQ.  
BERNICE CONN, ESQ.  
MICHAEL A. GEIBELSON, ESQ.

For Plaintiff Eastman Kodak Company:

NIXON PEABODY, LLC  
One Embarcadero Center  
Suite 1800  
San Francisco, California 94111  
BY: JOHN R. FOOTE, ESQ.  
BLAIRE RUSSELL, ESQ.  
KARL D. BELGUM, ESQ.

(Appearances continued, next page)

## FRITZ - CROSS EXAMINATION / CURRAN

1 **BY MR. CURRAN:**

2 **Q** No binder for me, Ms. Fritz.

3 **MR. CURRAN:** May I approach, Your Honor?

4 **THE COURT:** (Inaudible)

5 (Witness examines document)

6 **BY MR. CURRAN:**

7 **Q** Ms. Fritz, I ask you to take a moment to review Exhibit  
8 8206 and see if you can confirm for me that it's the Best Buy  
9 code of business ethics.

10 (Witness examines document)

11 **A** Yes, it looks to be our most recent version.

12 **Q** Okay. And ma'am, the cover has Best Buy's corporate logo  
13 on there, correct?

14 **A** Correct.

15 **Q** And if you flip over to Page 4, that's 8206-004, there's a  
16 letter from someone named Hubert Joly, President and CEO of  
17 Best Buy Company, Inc.?

18 That is the president and CEO of Best Buy, correct?

19 **A** Correct.

20 **MR. CURRAN:** Your Honor, I move for the admission of  
21 Exhibit 8206 into evidence.

22 **MR. SILBERFELD:** No objection.

23 **MR. FREITAS:** No objection.

24 **THE COURT:** Thank you. It will be received.

25

## FRITZ - CROSS EXAMINATION / CURRAN

1 (Trial Exhibit 8206 received in evidence)

2 (Document displayed)

3 **BY MR. CURRAN:**

4 **Q** Ms. Fritz, the last page -- well, let's take a moment.

5 So, Ms. Fritz, that's the cover of the code of business  
6 ethics (Indicating). Right?

7 **A** Yes.

8 **Q** That's on the screen here in court.

9 And then if we can take a quick look at Page 4, and while  
10 it's hard to read on the screen there, that's a message from  
11 Mr. Joly, correct?

12 **A** Correct.

13 **Q** Do I pronounce that correct? "Jo-lee"?

14 **A** "Jo-lee."

15 **Q** And then, on the last page of this exhibit, Page 24, there  
16 is a certification for employees to sign. Right?

17 (Witness examines document)

18 **A** Yes.

19 **Q** It is called "Personal Commitment." Do you see that?

20 **A** Yes.

21 **Q** Ms. Fritz, being familiar with this document, you are  
22 aware that there are certain guidelines that Best Buy sets  
23 forth with respect to competitive intelligence, right?

24 **A** Yes.

25 **Q** Let's take a look at that, please. And I believe you will

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1 find that on Page 16 of the exhibit. That's 8206-016.

2 Do you see that, ma'am?

3 **A** I do.

4 **Q** Okay. And I want to direct your attention in particular  
5 to the section toward the top, "COMPETITIVE INTELLIGENCE  
6 GATHERING."

7 (Document displayed)

8 **Q** And Ms. Fritz, is this section part of what you reviewed  
9 in giving your personal commitment to abide by the code of  
10 business ethics?

11 (Witness examines document)

12 **A** I don't recall if this is the exact version that I most  
13 recently signed. But it does look like our current competitive  
14 intelligence guidelines.

15 **Q** Okay. It looks familiar to you?

16 **A** It does.

17 **Q** Okay. And, ma'am, do you see first paragraph there where  
18 it says (As read):

19 "'Competitive intelligence' is the process of understanding  
20 and anticipating the competitive environment in which your  
21 business operates. All companies who wish to remain  
22 successful gather competitive intelligence in some way and  
23 Best Buy is no different."

24 I'll stop there for the moment, Ms. Fritz. Ms. Fritz, do  
25 you agree with that comment in this code?

## FRITZ - CROSS EXAMINATION / CURRAN

1 A Yes.

2 Q And do you agree that all companies who wish to remain  
3 successful gather competitive intelligence in some way?

4 A I cannot speak for other companies. I can only speak from  
5 my perspective of Best Buy.

6 Q Okay. Does Best Buy gather competitive intelligence?

7 A We do.

8 Q How does Best Buy go about gathering competitive  
9 intelligence?

10 A We gather it in a number of ways. So, we have market  
11 share information, so we subscribe to a number of different  
12 sources, whether that be NPD or Stevenson.

13 We do -- or we did, it's been modified recently, but we  
14 had a field intelligence team which is understanding what the  
15 competition is doing in a particular set of our markets.

16 And then, we're looking at all the advertising circulars  
17 and online websites of our competition on a regular basis.

18 Q Okay. A couple followup questions on that. Did you say  
19 "MPD"?

20 A "N" as in "Nancy," "P-D."

21 Q And, Ms. Fritz, what is NPD?

22 A I don't actually know what "NPD" stands for, but NPD is a  
23 market intelligence firm that supplies industry information to  
24 a number of different people.

25 Q Okay. By a subscription?

## FRITZ - CROSS EXAMINATION / CURRAN

1     **A**     We have a partnership with them, yes.

2     **Q**     Okay. So, they gather up information on the consumer  
3     electronics market, and provide that to you?

4     **A**     Yes.

5     **Q**     For a fee?

6     **A**     I actually don't know if it's a fee, or if they benefit as  
7     well with the information.

8     **Q**     All right. It's some sort of a partnership, you say,  
9     between Best Buy and NPD?

10    **A**     Yes.

11    **Q**     Is Best Buy, itself, engaged in gathering up the  
12    information that NPD reports?

13    **A**     Can you -- can you ask that again? I'm not understanding  
14    your question.

15    **Q**     Yes, I think you said NPD provides market data and  
16    analysis? Is that right?

17    **A**     Correct.

18    **Q**     Does Best Buy assist its partner, NPD, in gathering up  
19    such information?

20    **A**     No. We -- NPD actually collects point-of-sale information  
21    from Best Buy and other retailers, but they're kind of an  
22    agnostic provider of information. We don't give them other  
23    details besides the POS information.

24    **Q**     And when you refer to "point of sale," is that, like, at  
25    the cash register?

## FRITZ - CROSS EXAMINATION / CURRAN

1     **A**     Correct.

2     **Q**     And what type of information does NPD gather there?

3     **A**     Sales information, right.

4     **Q**     Price?

5     **A**     Yes.

6     **Q**     Quantity?

7     **A**     Categories. Uh-huh.

8     **Q**     Does it report on trends and things like that?

9     **A**     They do some trend reporting, yes.

10    **Q**     And then, is Stevenson another company like NPD?

11    **A**     Similar, but it's survey-based.

12    **Q**     Okay. And, is that again a subscription service that  
13    Best Buy subscribes to?

14    **A**     We have a partnership with them as well.

15    **Q**     Okay. And then, Ms. Fritz, I think you also referred to  
16    having had a field intelligence team. Is that right?

17    **A**     Yes.

18    **Q**     Okay. What was the field intelligence team?

19    **A**     We refer to it as the "competitive intelligence team." As  
20    I mentioned, it's been scaled back significantly, just based on  
21    cost and that kind of thing.

22            But, the main focus of that, again, was people in the  
23    specific markets understanding what our competition was doing,  
24    and making sure that there was line of sight, one.

25            Two, other promotions that were going and pricing going



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1 back to our price match guarantee, we wanted to make sure we  
2 were competitive. If we weren't competitive, they would be  
3 reporting that back to the buyer team to make sure that there  
4 was awareness of that.

5 Q So this competitive field intelligence team would go out  
6 in the marketplace, including store visits at competitor sites,  
7 and gather up information. Is that right?

8 A Yes.

9 Q And, use other resources available to them to gather up  
10 information?

11 A I can't speak for other resources.

12 Q Okay. And, you said it's been scaled back recently.  
13 When?

14 A I -- I actually don't have a lot of visibility to the  
15 details. I just know recently that group has gotten a lot  
16 smaller. So, probably in the last three or four months.

17 Q Okay. Is Mr. Britton still an employee of Best Buy?

18 A I believe so.

19 Q And he's been the head of competitive intelligence at  
20 Best Buy, right?

21 A He was not the head of it. He was, I think, a manager in  
22 competitive intelligence. But --

23 Q Who was the head, or who is the head of Best Buy's  
24 competitive field intelligence team?

25 A At one time, Mike Ray headed up our competitive

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1 intelligence team. He is no longer with the company. And  
2 prior to that, I don't remember.

3 Q Okay. And were you involved in the decision-making to  
4 scale back the field intelligence team?

5 A No.

6 Q Was cost the only reason that Best Buy decided to scale it  
7 back?

8 A Yes. That's my understanding.

9 Q All right. Now, Ms. Fritz, in addition to the field  
10 intelligence team, were there other employees who had  
11 responsibilities for gathering up competitive information and  
12 distributing it within Best Buy's other business units?

13 A Can you be more specific?

14 Q Yeah, like, did you have a team dedicated to gathering up  
15 information in Asia, competitive information in Asia?

16 A Not to my recollection.

17 MR. CURRAN: Your Honor, I would like to hand out  
18 another document, if I may. This one has been marked as  
19 Exhibit 5647. And I'll hand it around.

20 (Document handed up to the Court)

21 MR. CURRAN: And may I approach, Your Honor?

22 THE COURT: (Inaudible)

23 (Witness examines document)

24 BY MR. CURRAN:

25 Q Ms. Fritz, please take a moment to familiarize yourself

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1 with this document.

2 (Witness examines document)

3 **A** Okay.

4 **Q** Now, Ms. Fritz, this appears to be an email from Patrick  
5 McGinnis, dated on or about November 13, 2003, to you and  
6 various others at Best Buy. Correct?

7 **A** It appears that way, yes.

8 **MR. CURRAN:** Your Honor, I move for the admission of  
9 Exhibit 5647.

10 **MR. SILBERFELD:** No objection.

11 **THE COURT:** Thank you. It will be received.

12 **MR. FREITAS:** No objection.

13 (Trial Exhibit 5647 received in evidence)

14 (Document displayed)

15 **BY MR. CURRAN:**

16 **Q** First of all, Ms. Fritz, let's focus on the From and To,  
17 up top.

18 Do you see your name in the bottom middle of --

19 **A** I do.

20 **Q** And then, there are some other names I would like to call  
21 to your attention. A couple to the right of you, there's Kevin  
22 Winneroski's name. Right?

23 **A** Yes.

24 **Q** And he is the gentleman we saw in the video earlier this  
25 morning, here in court. Right?

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1     **A**     Correct.

2     **Q**     Okay. And then, closer to the top, in the middle, I think  
3     on the third line of the Tos, there's a Brian Dunn. Do you see  
4     that name?

5     **A**     I do.

6     **Q**     And Mr. Dunn at one point in time was the president and  
7     CEO of Best Buy, correct?

8     **A**     Correct, although I don't know if he was at this time.

9     **Q**     Right. I think it was later. Is that right?

10    **A**     I believe so.

11    **Q**     And, then, on the left side, two rows below Mr. Dunn there  
12    appears to be Jason Bonfig. Do you see that?

13    **A**     I do.

14    **Q**     He's another -- he's a close colleague of yours at  
15    Best Buy, right?

16    **A**     Yes.

17    **Q**     And, Ms. Fritz, this is an Asia News Flash circulated  
18    within Best Buy, correct?

19    **A**     It appears that way. I don't actually recall the  
20    document. But, that's what it says.

21    **Q**     Okay. And, and, Ms. Fritz, this was a periodic feature of  
22    competitive intelligence at Best Buy, during this time period.  
23    Right?

24    **A**     I don't actually recall it being a periodic feature.

25    **Q**     Okay. Do you recall who Patrick McGinnis is?

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1     **A**     Yes.

2     **Q**     Who is Mr. McGinnis?

3     **A**     I'm not sure what his exact title is now, but he works in  
4     our global sourcing office.

5     **Q**     And he splits time between Minnesota and China, or at  
6     least, did at this period of time?

7     **A**     He did at this period of time. I'm not sure that he does  
8     that any more.

9     **Q**     I notice lower on this first page there is an address  
10    block for Mr. McGinnis. And it appears he has not only U.S.  
11    phone numbers, but also some phone numbers in China.

12           Do you see that?

13    **A**     Yes. I believe this was at a time when he was -- or  
14    likely at a time when he was living there.

15    **Q**     And, Mr. McGinnis writes at the beginning here (As read):  
16    "All, Please feel free to send Mark Pritchard or me requests  
17    for a specific intelligence search at any time."

18           Do you see that, ma'am?

19    **A**     I do

20    **Q**     Do you recall Mark Pritchard being another Best Buy  
21    employee gathering up competitive intelligence?

22    **A**     No, I recall Mark Pritchard being a person on our private  
23    label team.

24    **Q**     Private label team. And, do I understand correctly that  
25    Best Buy's private label team was exploring the possibility or

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1 maybe developing the reality of Best Buy -- Best Buy's own  
2 private-label finished products?

3 **A** We do have those actually, today, yes.

4 **Q** Okay. And, do you today have private-label notebook  
5 computers for sale?

6 **A** We do not.

7 **Q** Okay. But that was an initiative that Best Buy had for a  
8 number of years -- or at various times, correct?

9 **A** We -- it was a -- private label was definitely an  
10 initiative in the television space. We did experiment a few  
11 things in desktops and notebooks, but it never really took off.

12 **Q** Okay. So, so when Best Buy was exploring the possibility  
13 of developing a private-label notebook computer, it -- it had  
14 some of its employees do some investigative work on the -- any  
15 the field, so to speak, in Asia, including examining component  
16 costs and things like that. Right?

17 **A** I don't recall that.

18 **Q** So, I would like to refer you, Ms. Fritz, to a couple of  
19 other features of this, this particular Asia News Flash.

20 First, at the very bottom, even below Mr. McGinnis's  
21 signature block there, and below his address, there is a --  
22 looks like a legend of some kind along the bottom in darker  
23 print.

24 Do you see that, ma'am?

25 **A** I do.

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1 Q And there is a reference to (As read):

2 "The information contained in this message and any attachment  
3 hereto is confidential and is for the sole use of the intended  
4 recipients. If you are not the intended recipient, or an  
5 employee or agent responsible for delivering this message to  
6 the intended recipient, you are hereby notified that any  
7 review, dissemination, distribution or copying of this message  
8 may be a violation of law and is strictly prohibited. If you  
9 have received this message in error, please notify the sender  
10 immediately and delete the original and all copies of this  
11 message."

12 Okay. Do you see that passage, Ms. Fritz?

13 A I do.

14 Q Okay. That's a warning about unauthorized distribution or  
15 dissemination of the information in this email. Right?

16 A It appears that way, yes.

17 Q Okay. Now, I would like to direct your attention to some  
18 specific items being reported here. And for that, I would like  
19 to direct you to the final -- to the back end of this document.  
20 And specifically to Page 22, so that's 5647-22.

21 (Request complied with by the Witness)

22 (Document displayed)

23 Q Are you there, Ms. Fritz?

24 A I am.

25 Q Okay. Now, this page and the two pages after it appear to

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1 be a summary of Asia News Flash items. Correct?

2 **A** It looks that way, yes.

3 **MR. CURRAN:** Okay. And, let's start maybe with the  
4 first item there. The first row. So it's the very top, the  
5 one -- one of the ones dated 11-13-03.

6 So, let's highlight that all the way across and blow that  
7 up a little bit.

8 (Document highlighted)

9 **BY MR. CURRAN:**

10 **Q** So, Ms. Fritz, this is reporting on competitive  
11 intelligence gathered up relevant to retailer Circuit City.  
12 Correct?

13 **A** It looks that way, yes.

14 **Q** And a relevant manufacturer or marketing company here is a  
15 company by the name of Tenfull, right?

16 **A** I am not familiar with Tenfull.

17 **Q** And then on the right column where it says "From the front  
18 line story," there's a message there (As read):

19 "According to a sales manager of Tenfull, a major mobile  
20 electronics product manufacturer in China, they have supplied  
21 mobile video products to Circuit City. According to Tenfull,  
22 Circuit City sourced products with recycled display to lower  
23 the cost of promotional items."

24 Do you see that, Ms. Fritz?

25 **A** I do.



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1 Q Okay. So that was some competitive intelligence being  
2 reported to you and your colleagues at Best Buy from people on  
3 the ground in Asia. Right?

4 A I don't recall this specific information, but it is in the  
5 summary.

6 Q Okay. And it's in the email that was sent to you and your  
7 colleagues.

8 A Correct.

9 Q Okay. I'd like to cherry-pick a few of the other items  
10 here.

11 MR. CURRAN: So let's go about a little more than  
12 halfway down the page, and there's an item from 10-16-03  
13 dealing with peripherals, at the first of the pair there.

14 And, Ms. Fritz, this relates to retailer Dell. Correct?

15 A Yes, it looks that way.

16 Q And just as a little background, when you were listing  
17 your suppliers of computer products for Mr. Silberfeld before,  
18 during the relevant period, 1998 to 2006, you did not identify  
19 Dell. Right?

20 A I did not.

21 Q And that was accurate testimony, because Best Buy didn't  
22 start buying Dell product until the end of 2007, the beginning  
23 of 2008. Right?

24 A Yeah, I don't recall the specific time frame, but I know  
25 it was -- it was later.

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1 Q Right. So you know it wasn't in the period 1998 to 2006.  
2 Right?

3 A I believe so, yes.

4 Q Okay. And, ma'am, the same, by the way, with Visio,  
5 right? Best Buy didn't start buying Visio product until after  
6 2006. Right?

7 A Yeah, Visio was actually very recent, in the last two  
8 years.

9 Q So those are two manufacturers of computer products that  
10 Best Buy did not buy product from during the relevant period  
11 here. Right?

12 A Correct.

13 Q Okay. So, here, Dell is -- is, in fact, being considered  
14 a competitor, not a vendor. Right?

15 A It would appear that way.

16 Q Well, and you considered Dell to be a competitor during  
17 this time period. Right?

18 A We did consider them a competitor during that time period.

19 Q And in fact, at Best Buy, maybe at times working with HP,  
20 you had specific task forces to target competition against  
21 Dell. Right?

22 A We were always reviewing our competition. And Dell was  
23 one of them, yes.

24 Q I'm sorry; you were always reviewing the competition?

25 A Yes.

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1 Q Okay. Thank you.

2 So, Ms. Fritz, on the right side here in the news item  
3 (Indicating), it says (As read):

4 "Dell will launch a new model of hard disk based MP3 player on  
5 October 26. 15K units have been ordered thus far. The device  
6 was designed and produced by Creative Lab with TI solution and  
7 the 1.8-inch hard disk is from Toshiba. It is believed that  
8 Dell will sell the 20G model at 299..."

9 U.S. dollars, or dollars.

10 "...and 10G model at \$229."

11 Do you see that?

12 A I do.

13 Q And, Ms. Fritz, the date of this email is November of '03.  
14 Right?

15 (Witness examines document)

16 A Correct.

17 Q But the date of the item being reported here is  
18 October 16, '03. Right?

19 (Witness examines document)

20 A Yeah, it looks that way.

21 Q Okay. So this -- this appears to be reporting information  
22 from 10-16-03 about activity that Dell would do on  
23 October 26th. Right?

24 A I don't know specifically, but the -- the dates are  
25 different in here, yes.

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1 Q Okay. So, so, but this appears to be a report on future  
2 activity, future product launch, by Best Buy's competitor,  
3 Dell. Right?

4 A I can't say that for sure.

5 Q Okay. But that's what it appears, based on this document  
6 (Indicating)?

7 A Based on this document, that's what it would appear like.  
8 But I can't -- I can't validate that.

9 Q Okay. Let's look at the final three items on this page.  
10 The third from the bottom, Ms. Fritz, is from an October  
11 2nd, '03 date. And it relates to retailer Sears, correct?

12 A I'm sorry; can you tell me the date again? I don't see  
13 it.

14 Q Yeah. I may have misspoken. 10-02-03. So, it's the  
15 third from the bottom on this same page, 5647-22.

16 A Okay. I see it.

17 Q And that item relates to retailer Sears, right?

18 A Correct. That's what is stated here.

19 Q Okay. And the item says (As read):

20 "According to a sales manager from Changhong, Apex is  
21 currently working with Sears store on a potential deal to  
22 supply the retailer DVD/VHS combo sourced from Changhong."

23 Is that what this reports, ma'am?

24 A I -- I don't have any recollection of this, but that is  
25 what's stated here.

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1 Q Okay. So your colleagues were reporting a potential deal  
2 between Sears and a supplier. Correct?

3 A I -- I can't speak to the fact that that's what they were  
4 reporting or not.

5 Q Okay. And then the item just below that from the same  
6 date relates to retailer Target, right?

7 A Correct.

8 Q Okay, and the report there says (As read):

9 "According to a sales manager with AmTRAN, it has been  
10 supplying 17-inch wide-screen LCD TVs to Target Stores for a  
11 few months. The total shipment is close to 10,000 units."

12 Do you see that, ma'am?

13 A I do.

14 Q So this appears to be your colleagues reporting on this  
15 competitive intelligence related to Target, right?

16 A Again, I can't -- I can't validate if the colleagues  
17 reported that or not. I can read that here, which is what it  
18 says, but I don't have a recollection of that.

19 Q Okay. But, but it is being reported in this email  
20 (Indicating), right?

21 A It looks that way, yes.

22 Q Okay. And then the very -- the final item on this page  
23 relates to Wal-Mart. Do you see that, ma'am?

24 A I do.

25 Q And at this point in time I think you have already

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1 testified Wal-Mart was a particularly close competitor of  
2 Best Buy. Right?

3 **A** Correct.

4 **Q** And the item here being reported says (As read):

5 "Through a relationship with Tatung, a sourcing manager from  
6 Best Buy Asia has found that Tatung is selling 23-inch LCD TVs  
7 to Wal-Mart with Tatung brand name. The price of the units is  
8 around \$1,150 (landed price) for 10,000 PCs. The TVs will be  
9 in store in November."

10 Do you see that, ma'am?

11 **A** I do.

12 **Q** So your colleagues were reporting that competitive  
13 intelligence relating to Wal-Mart. Right?

14 **A** It appears that they were.

15 **Q** Okay. And, just a couple of others. On the next page --  
16 so this is Page 5647-23, let's go down to the second half of  
17 the page.

18 On 9-2-03, so September 2nd, '03, here's another item,  
19 this one related to Dell. Correct?

20 (Witness examines document)

21 **A** Yep.

22 **Q** And it looks like the source here is -- or the relevant  
23 manufacturer is Samsung, right?

24 **A** It looks that way, yes.

25 **Q** And the news item being reported here is (As read):

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1 "It has been confirmed that Dell has purchased multimedia  
2 monitors from Samsung. Dell had had discussion for long time  
3 with Am TRAN to purchase multimedia monitors. It switched  
4 potential vendor in the last minute to its long-time partner,  
5 Samsung, for unclear reasons. One possible reason is the  
6 widely thought notion that Taiwanese companies are far less  
7 sophisticated in sales and marketing than their Korean  
8 competitors."

9 So, ma'am, that was the competitive intelligence being  
10 reported as to your competitor Dell. Right?

11 **A** It appears so.

12 **Q** And then, right below that, there is an item related to  
13 Gateway. Correct?

14 **A** Correct.

15 **Q** And, now, ma'am, inform me. Was Gateway a competitor, a  
16 cus- -- a supplier, or both, to Best Buy during this time?

17 **A** I believe during this time, they were a supplier.

18 **Q** A supplier. Okay. And, this item --

19 **A** Or vendor, sorry.

20 **Q** Okay. And this item, it appears that the relevant  
21 manufacturer is Chunghwa Picture Tubes. Do you see that?

22 **A** I do.

23 **Q** And that is one of the companies that Best Buy has sued in  
24 this lawsuit. Right?

25 **A** Um, I believe that is CPT, yes.

## FRITZ - CROSS EXAMINATION / CURRAN

1 Q Okay. And then, the item being reported here (As read):  
2 "Asia office sourcing manager has learned that U.S. company  
3 Gateway recently increased its 46-inch plasma September  
4 purchasing quantity to 3,000 units from original 2000.  
5 Gateway will also lower the retail price by \$300 to 3499. The  
6 company is in negotiation with CPT, current supplier to  
7 Best Buy 46-inch model, to increase its order quantity for  
8 October and beyond, seeking to take the majority of CPT's  
9 current monthly capacity of 6,000 units."

10 Do you see that, ma'am?

11 A I do. I just want to back up for a moment to clarify that  
12 Gateway, we bought PCs from them. I don't believe we ever  
13 bought televisions from them.

14 Q Okay. So in that respect, Gateway was a manufacturer of  
15 televisions, but not supplying it to you.

16 A Correct.

17 Q Okay. But you were selling televisions at the time, at  
18 Best Buy, right?

19 A Correct.

20 Q So, with respect to televisions, Gateway was a competitor,  
21 not a supplier. Right?

22 A Yes.

23 Q Okay. So this is competitive intelligence about  
24 competitor Gateway.

25 A It appears that way, yes.



## FRITZ - CROSS EXAMINATION / CURRAN

1 Q And then, skipping down to the final two items, on this  
2 page, the second to last is an item from August 14, '03,  
3 related to Circuit City. Right?

4 A Yes.

5 Q And this one states (As read):

6 "GBM won an auction held by Circuit City to supply the latter  
7 with Home Theater in a Box at the price of \$78.85 FOB Hong  
8 Kong. The volume is 150,000."

9 Do you see that, ma'am?

10 A I do.

11 Q So that's information about your competitor Circuit City  
12 buying Home Theater in a Box from GBM for this specific price.

13 Right?

14 A It appears that way, yes.

15 Q And, at that specific volume. Right?

16 A Yes.

17 Q That's pretty specific competitive intelligence, isn't it?

18 A It appears specific, yes.

19 Q And then the last item, from the same date, this time  
20 dealing with Gateway. And that -- and here, the report is.

21 (As read):

22 "According to Am TRAN, one of the major makers for LCD  
23 monitors and LCD TVs, it is currently supplying 17-inch 16:9  
24 wide-aspect LCD TVs to Gateway. The price is 440 to \$450 FOB  
25 Taiwan, while Gateway is selling it at \$799. Until recently,

## FRITZ - CROSS EXAMINATION / CURRAN

1 the shipped volume has been 3,000, shipped via air with the  
2 cost absorbed by Gateway as it tried to hit stores quickly.  
3 The volume forecast from Gateway is 3- to 5,000 a month. Am  
4 TRAN made an offer to Best Buy Asia office at 420 per unit."

5 Do you see that, ma'am?

6 **A** I do.

7 **Q** Okay. So, again, that's pretty specific competitive  
8 intelligence about your competitor, Gateway. Right?

9 **A** It appears that way, yes.

10 **Q** Now, ma'am, why was Best Buy gathering competitive  
11 information like this in Asia and disseminating it through a  
12 variety of Best Buy employees, including yourself, and people  
13 at the highest levels of the company?

14 **A** I -- I can't speak to why this specific document was  
15 gathered.

16 **Q** Okay. I'm not limiting it to this specific document. But  
17 I think, as you could see, what we were going through was an  
18 archive of previous reports (Indicating). Right?

19 **A** Yes.

20 **Q** So this was a periodic dissemination of competitive  
21 information from Asia, right?

22 **MR. SILBERFELD:** Objection, foundation.

23 **THE WITNESS:** Again, I --

24 **THE COURT:** Sustained.  
25

## FRITZ - CROSS EXAMINATION / CURRAN

1 **BY MR. CURRAN:**

2 **Q** Well, Ms. Fritz, does it appear to you that these pages at  
3 the back (Indicating) were a -- represent a periodic  
4 distribution of information from Asia?

5 **A** It -- this (Indicating) is a distribution of information  
6 from Asia. Whether it was a periodic update, I cannot say.

7 **Q** Okay. Why was this information being distributed and  
8 disseminated within Best Buy, including at the highest levels?

9 **A** I could not specify why.

10 **Q** Ma'am, wasn't it so Best Buy could compete more  
11 effectively against its competitors?

12 **A** We were always gathering competitive information, so that  
13 we were knowledgeable about what was happening in the  
14 marketplace.

15 **Q** Ms. Fritz, you testified this morning about Black Friday.  
16 And, I think you said it was the most important day in the most  
17 important time of the year in retail. Did I get that right?

18 **A** Yes.

19 **Q** And I think Mr. Silberfeld asked you, and I think you  
20 agreed, that Black Friday was the day that retailers, at least  
21 apocryphally, became profitable during the year, right?

22 **A** I can't remember specifically what he asked me, but what I  
23 was explaining was Black Friday was a key prominent time during  
24 the holiday, and really kind of kicked off the holiday time  
25 frame. And to a large degree, would dictate success and

## FRITZ - CROSS EXAMINATION / CURRAN

1 momentum for the rest of the holiday season.

2 So it was critical, again, not only at Best Buy, but  
3 across the industry.

4 Q Okay. Was it, quite literally, the most important day of  
5 the year at Best Buy?

6 A You could say that.

7 Q And Ms. Fritz, at that time of year, in particular,  
8 competition was intense between Best Buy and its competitors.  
9 Right?

10 A Yes.

11 Q And, you and your colleagues were always trying to  
12 determine what your competitors might or might not do in their  
13 stores for Black Friday, right?

14 A We were always trying to understand if -- if we had the  
15 best offer from a customer perspective, yes.

16 Q And, Ms. Fritz, during the relevant period we're talking  
17 about, and specifically, say, 2005, a colleague of yours was  
18 Stephanie "Wauray," right?

19 A Actually, it's Stephanie "Jwair."

20 Q "Jwair," okay.

21 (Reporter interruption)

22 **MR. CURRAN:** It's J-U-A-I-R-E.

23 Your Honor, I have another document to pass around.

24 **THE COURT:** All right.

25 (Document handed up to the Court)

## FRITZ - CROSS EXAMINATION / CURRAN

1           **MR. CURRAN:** May I approach the witness, Your Honor?

2           **THE COURT:** You may.

3           (Witness examines document)

4           **BY MR. CURRAN:**

5           **Q** Ms. Fritz, do you have Exhibit 8140 in front of you?

6           **A** I do.

7           **Q** And, please feel free to take a moment to familiarize  
8 yourself. But then, my question will be whether or not this is  
9 an exchange of emails between you and colleagues of yours at  
10 Best Buy.

11          **A** Okay.

12          (Witness examines document)

13          **A** Okay.

14          **Q** So, Ms. Fritz, focusing on the top email on Exhibit 8140,  
15 this is an email from Stephanie -- Juaire?

16          **A** Juaire.

17          **Q** Juaire -- Juaire, to you, dated on or about June 21st,  
18 2005. Correct?

19          **A** Yeah, I don't recall this specific email, but that is  
20 what's stated.

21               **MR. CURRAN:** Your Honor, I move for the admission  
22 into evidence of 8140.

23               **MR. SILBERFELD:** No objection.

24               **MR. FREITAS:** No objection, Your Honor.

25               **THE COURT:** Thank you. It will be received.

## FRITZ - CROSS EXAMINATION / CURRAN

1 (Trial Exhibit 8140 received in evidence)

2 (Document displayed)

3 **BY MR. CURRAN:**

4 **Q** All right, Ms. Fritz, I want to begin -- we will go  
5 through these emails in the time that they actually were  
6 written and sent, so we'll start with the last -- the  
7 first-in-time email, which is the last email that you have.

8 And this starts at the very bottom of the first page where  
9 you can see it's from David Kielly, on June 20th, 2005. And  
10 then the bulk of the email is on the next page.

11 Do you see that, ma'am?

12 **A** I do.

13 (Document displayed)

14 **Q** Now, Ms. Fritz, the subject line here is "Thanksgiving Day  
15 Front and Back Cover Items," do you see that?

16 **A** I do.

17 **Q** And that is talking about the Thanksgiving Day circular  
18 promoting Black Friday items, correct?

19 **A** I believe so, yes.

20 **Q** Okay. And, even though this email is from June, 2005,  
21 several months before Thanksgiving, the folks at Best Buy are  
22 already thinking about Black Friday. Right?

23 **A** Absolutely.

24 **Q** Okay. And here, Mr. Kielly writes in this email

25 (As read):

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1 "Everyone, as a reminder, submissions for the front cover time  
2 specials and back cover items for the Thanksgiving Day insert  
3 are due by Friday of this week."

4 I'll continue in a minute. But, I think you testified  
5 this morning about inserts. Those are what goes in the  
6 newspaper on Thanksgiving Day, in this case?

7 **A** The insert is what goes in the newspaper every week.

8 **Q** So, for instance, some of the color ads that you  
9 identified for Mr. Silberfeld this morning are insert items,  
10 right?

11 **A** Right. All of our advertisements are considered inserts.

12 **Q** Okay. And then continuing with this email (As read):

13 "In prior years some business team members have been reluctant  
14 to share details re their offers for fear of this information  
15 leaking out and becoming public. In order for my team to give  
16 you visibility to the forecasted units, revenue and margin, we  
17 will need to have accurate information."

18 Let me stop there for a second. Ma'am, was it a problem  
19 having information leak out and become public from within  
20 Best Buy?

21 **A** There was always a concern that the offers would get out,  
22 and therefore, get into the hands of someone else. So we were  
23 very careful in how we managed our insert in general, and the  
24 pricing, and similarly, with our dot-com website.

25 **Q** So, the concern was that people working for Best Buy would

## FRITZ - CROSS EXAMINATION / CURRAN

1 leak out Best Buy's own information?

2 **A** Or someone else would get their hands on it. We were just  
3 very concerned in general to keep it to a small group.

4 **Q** So this was highly-sensitive competitive information?

5 **A** Highly-sensitive promotional information.

6 **Q** Okay. Good -- that is a good correction. So,  
7 highly-sensitive promotional information, so it would have been  
8 competitive intelligence for your competitors, but for you, it  
9 was just highly-sensitive promotional material.

10 **A** Yes.

11 **Q** Okay. And then continuing (As read):

12 "To help facilitate keeping the information confidential,  
13 Stephanie has set up a restricted file for the PPs..."

14 And, can you help us? What does "PPs" mean here,  
15 Ms. Fritz?

16 **A** I believe it stands for "promotional planner."

17 **Q** Okay.

18 **A** Which was someone that someone that would actually help  
19 submit the details for the ads.

20 **Q** Okay.

21 "...for the PPs to enter their team's information. The only  
22 people with access to that file will be the PPs, Stephanie,  
23 Elva Krebsbach (on my team) and me. Please reinforce the need  
24 for your teams to give us the most accurate and complete  
25 information they can by Friday of this week. Next week, we



## FRITZ - CROSS EXAMINATION / CURRAN

1 will send you a first look at the items and forecasted  
2 information. Call if you have questions."

3 So, Ms. Fritz, this indicates, does it not, that steps  
4 were being taken to create a restricted file to help secure  
5 the confidentiality of this information?

6 **A** Yes. Appears that way.

7 **Q** And then, the next email in time is from you to some of  
8 your colleagues. Right?

9 **A** Yes.

10 **Q** Okay. And you write simply:

11 "Do you have your plans set? I'd like to review when you get  
12 a chance."

13 Right?

14 **A** Yes.

15 **Q** And then Stephanie, as I'll call her, responds to you.  
16 Correct?

17 **A** Yes.

18 **Q** And copies some colleagues as well. Correct?

19 **A** Yes.

20 (Document displayed)

21 **Q** Okay. And then, she writes some information about  
22 notebooks and desktops. But then I want to focus on this  
23 section about "Other points of consideration."

24 And, ma'am, do you see the first bullet point under there  
25 (As read):

## FRITZ - CROSS EXAMINATION / CURRAN

1 "We have intelligence that Wal-Mart will be at 399 or less  
2 instant on 256/40 15-inch combo branded notebook with a  
3 forecast of just under 100,000 units."

4 Do you see that, Ms. Fritz?

5 **A** I do.

6 **Q** So that's competitive intelligence about Wal-Mart, right?

7 **A** It looks that way, yes.

8 **Q** And, it's specifically competitive intelligence about what  
9 Wal-Mart's promotional activity will be in its insert several  
10 months later for Thanksgiving and Black Friday. Right?

11 **A** It appears that way, yes.

12 **Q** And this is being reported to you by your subordinate,  
13 Stephanie. Right?

14 **A** Yes.

15 **Q** Okay. And then the next item:

16 "We have separate intelligence that suggests that some  
17 retailers will opt for best price for a configuration versus  
18 lowest price optic."

19 Do you see that, Ms. Fritz?

20 **A** I do.

21 **Q** Can you explain for us what that -- the second part of  
22 that sentence means, where -- "...for a configuration versus  
23 lowest price optic"?

24 **A** Yeah, I don't recall this specific instance, but what  
25 we've typically meant in the past regarding best prices for

## FRITZ - CROSS EXAMINATION / CURRAN

1 configuration versus optic would be a low price based on a  
2 certain feature set in a product, versus just the lowest  
3 opening price point, which would mean the lowest price optic.

4 **Q** Okay. So, those are alternative promotional approaches?  
5 Is that right?

6 **A** Yeah, promotional approaches, but also kind of a strategy  
7 approach as well.

8 **Q** Okay. And, according to your subordinate Stephanie, folks  
9 at Best Buy had separate intelligence suggesting that some  
10 competitors would opt for best price for a configuration as  
11 opposed to lowest price optic, right?

12 **A** It appears that way.

13 **Q** And then the third bullet point (As read):

14 "Ultimately, with the amount of units forecasted at Wal-Mart  
15 and their intent to enter the space long-term, we feel it  
16 necessary to win not tie, thus the possibility to go to 359."

17 Do you see that?

18 **A** I do.

19 **Q** And, what do you understand Stephanie to be reporting to  
20 you with that item?

21 **A** I would understand it to be that in order for us to be the  
22 most competitive in the market, we would have to go to 359.

23 **Q** Okay. So, correct me if I'm wrong, but what Stephanie is  
24 proposing here is using the competitive intelligence with  
25 respect to Wal-Mart and other retailers, to advantage Best Buy

## FRITZ - CROSS EXAMINATION / CURRAN

1 by helping it become more competitive.

2 **A** I can't say if that was her intent.

3 **Q** Was that your understanding?

4 **A** My understanding is that they were looking at competitive  
5 information while making final promotional decisions for Black  
6 Friday.

7 **Q** Okay. So, this, this -- this indicates to you the use of  
8 competitive intelligence for Wal-Mart's own pricing  
9 decision-making. Right?

10 **A** Can you repeat that?

11 **Q** Yes. This email from Stephanie to you (Indicating)  
12 indicates the use of competitive intelligence as to Wal-Mart  
13 and other retailers, for the use by Best Buy in determining  
14 what price it should charge consumers.

15 **A** It appears that way.

16 **Q** Ms. Fritz, do you know what the sources were of the  
17 competitive intelligence being reported by Stephanie to you  
18 here?

19 **A** I do not.

20 **Q** Do you recall if you asked her?

21 **A** I don't recall.

22 **Q** Do you recall if that competitive intelligence turned out  
23 to be accurate?

24 **A** No. I don't recall.

25 **Q** Was it unusual for you to have competitive intelligence of

## FRITZ - CROSS EXAMINATION / CURRAN

1 this type months ahead of your competitors' actual action?

2 **A** Not unusual in Black Friday planning, no.

3 **Q** So, it does not strike you as unusual that Stephanie in  
4 June was reporting on what Wal-Mart might do in November.

5 **A** No. We were all doing our planning well in advance.

6 **Q** All right.

7 **MR. CURRAN:** Your Honor, I have another document to  
8 hand out.

9 **JUROR:** Excuse me, Your Honor; may I be excused for a  
10 moment?

11 **THE COURT:** We'll take a five-minute break. Don't  
12 speak to each other or anyone else about this case.

13 (Jury excused)

14 **THE COURT:** All right. We will just break for five  
15 minutes.

16 You can step down.

17 (Recess taken from 1:40 to 1:47 p.m.)

18 **THE CLERK:** Come to order.

19 (The following proceedings were held in the presence of  
20 the Jury)

21 **THE COURT:** Welcome back, ladies and gentlemen. You  
22 may all be seated.

23 All right, you may proceed, Mr. Curran.

24 And you are still under oath, ma'am.

25 **MR. CURRAN:** Your Honor, I was handing out Exhibit

## FRITZ - CROSS EXAMINATION / CURRAN

1 8202. I think I have given copies to counsel already.

2 (Document handed up to the Court)

3 **MR. CURRAN:** May I approach the witness, Your Honor?

4 **THE COURT:** You may.

5 (Witness examines document)

6 **BY MR. CURRAN:**

7 **Q** All right, Ms. Fritz, please take a moment to take a look  
8 at 8202. And then I'll ask you some questions about it.

9 (Witness examines document)

10 **MR. CURRAN:** And Your Honor, I understand  
11 Mr. Silberfeld stipulates to the admission of 8202.

12 **MR. SILBERFELD:** Without further foundation, yes,  
13 Your Honor.

14 **THE COURT:** All right, thank you. It will be  
15 received.

16 (Trial Exhibit 8202 received in evidence)

17 (Document displayed)

18 **MR. CURRAN:** Mr. Freitas as well, I think?

19 **MR. FREITAS:** Yes, Your Honor.

20 **MR. CURRAN:** Okay.

21 **BY MR. CURRAN:**

22 **Q** Okay, Ms. Fritz, still in 2005 but now closer to  
23 Thanksgiving, right?

24 **A** Correct.

25 **Q** And at the bottom email of the three here is, again,

## FRITZ - CROSS EXAMINATION / CURRAN

1 Stephanie to you, relating to the Thanksgiving Day insert.

2 Right?

3 **A** It appears that way, yes.

4 **Q** And, in the first sentence she refers to a large  
5 cross-functional group meeting earlier that day to discuss  
6 competitive intelligence. Right? Or competitive information.

7 **A** That's what's here, yes.

8 **Q** And then in the -- kind of the block paragraph there,  
9 "What we know....." she's reporting on competitive  
10 information that Best Buy folks have gathered up. Right?

11 (Witness examines document)

12 **A** Yeah, it looks that way, as well as some of our value  
13 equation analysis.

14 **Q** Okay. So, looking at the competitive information there,  
15 the first line is a Best Buy product being considered for Black  
16 Friday. Right?

17 **A** It appears that way, yes.

18 **Q** Okay. So that's not competitive information; that's your  
19 own information. Right?

20 **A** I believe so. I don't recall this specific instance, but  
21 that's what's stated here, yes.

22 **Q** Okay. And there, Stephanie is setting forth the  
23 characteristics of this particular product. Right?

24 **A** Yes.

25 **Q** And this, this happens to be a Toshiba product. Right?

## FRITZ - CROSS EXAMINATION / CURRAN

1     **A**     Yes, it looks that way.

2     **Q**     And first, it describes the certain features of the  
3     product -- and is this a laptop, Ms. Fritz?

4     **A**     I believe so, yes.

5     **Q**     And it talks about the price, with the instant rebate,  
6     right?

7     **A**     Yes.

8     **Q**     And then, the 10,000-unit forecast. Right?

9     **A**     Yes.

10    **Q**     And that's Best Buy's forecast of how many they'll sell.  
11    Right?

12    **A**     Correct.

13    **Q**     Okay. And then the next line, "WM" means Wal-Mart, right?

14    **A**     Uh, I would assume so, but -- I don't know for sure.

15    **Q**     So this is competitive intelligence that Stephanie is  
16    reporting to you. Right?

17    **A**     This appears to be information on Wal-Mart as well as a  
18    few other competitors.

19    **Q**     Okay. And specifically, information about what they're  
20    going to be doing on Thanksgiving ahead of Black Friday.  
21    Right?

22    **A**     It looks like information that she's saying here's what  
23    she's heard. So, and it does say "for T-day," yes.

24    **Q**     She's saying "Here's what we know," right?

25    **A**     Yes.



## FRITZ - CROSS EXAMINATION / CURRAN

1 Q Okay. And, as to the Wal-Mart product, it describes the  
2 features, the price, and the unit forecast. Correct?

3 A Yes, it looks that way.

4 Q And the unit forecast is the forecast of how many units  
5 Wal-Mart thinks it will sell. Right?

6 A I couldn't say that for sure, but that's what's here.

7 Q And then the one below that, COMP, that means Comp USA,  
8 right?

9 A I would imagine, yes.

10 Q And that's another competitor of yours at the time, right?

11 A Yes.

12 Q And there again, the features of their Black Friday  
13 special, and no forecast information on that one. Right?

14 A I don't see any.

15 Q Okay. And then, two below that, we will skip the other  
16 Best Buy one, there is a Circuit City item. Correct?

17 A Yes.

18 Q And it's got the features of the product, the price, and  
19 Circuit City's forecast. Right?

20 A Yes.

21 Q So, this block (Indicating) represents competitive  
22 information, gathered up by Best Buy, and considered by  
23 Best Buy in its -- in its decision-making. Right?

24 A Again, I don't recall the specific instance or time, so  
25 I'm not sure if it was all gathered up by Best Buy, but it does

## FRITZ - CROSS EXAMINATION / CURRAN

1 appear to be information for that time period.

2 Q Okay. And it's pretty specific, isn't it? Especially the  
3 inclusion of the forecasts for units to be sold. Right?

4 A It is pretty specific, yes.

5 Q Okay. And, ma'am, the "V/E," I think you have referred,  
6 that stands for "value equation," right?

7 A Correct.

8 Q And that's -- that part of the lines is a Best Buy  
9 analysis. Right?

10 A Yes.

11 Q So, other retailers, to your knowledge, don't use the  
12 value equation, right?

13 A Not to my knowledge, no.

14 Q That was invented at Best Buy, right?

15 A Yes.

16 Q As a way to value specific computing products?

17 A As a way to assign a consumer value to a set of components  
18 in a given product.

19 Q Okay. And I think you testified this morning that the  
20 value equation is used at Best Buy to value a specific product,  
21 both for purposes of how much Best Buy should pay for it, and  
22 how much it should sell it for to consumers. Right?

23 A No, not actually, not from my recollection. It's more for  
24 how much we're going sell of the product, and then how much we  
25 should sell it for. Not how much we should pay for it.

## FRITZ - CROSS EXAMINATION / CURRAN

1 Q So, the information from the competitors here, Ms. Fritz,  
2 from Wal-Mart, from Comp USA and from Circuit City, that is  
3 non-public confidential information, isn't it?

4 A I don't know the answer to that. I'm not sure where it  
5 came from.

6 Q Okay. But we saw before that certainly, Best Buy  
7 considered its Black Friday plans to be confidential,  
8 non-public information. Right?

9 A Yes.

10 Q And took some rather elaborate steps to protect that  
11 information. Right?

12 A Which is standard, yes.

13 Q Okay. So, you would think that your competitors  
14 considered their information non-public, confidential  
15 information as well, wouldn't you?

16 MR. SILBERFELD: Objection; speculative.

17 THE COURT: Sustained.

18 BY MR. CURRAN:

19 Q Now, Ms. Fritz, you respond to Stephanie here, correct?

20 A I do.

21 Q And, among other things, you correct the Wal-Mart price.  
22 Correct?

23 A Yes. It looks like I -- I do correct it.

24 Q Okay. How did you know what Wal-Mart's price would be for  
25 Black Friday?

## FRITZ - CROSS EXAMINATION / CURRAN

1 **A** I don't recall this specific instance. So, I can't -- I  
2 can't -- I couldn't say.

3 **Q** Okay.

4 **MR. CURRAN:** Your Honor, one more document in this  
5 set. And I've shown it to Mr. Silberfeld, who has stipulated  
6 to its admission.

7 **MR. SILBERFELD:** Yes, Your Honor. 8197.

8 **THE COURT:** It will -- any objection, from anybody  
9 else?

10 **MR. FREITAS:** No objection, Your Honor.

11 **THE COURT:** It will be received. Thank you.

12 (Trial Exhibit 8197 received in evidence)

13 (Document displayed)

14 **MR. CURRAN:** May I approach the witness, Your Honor?

15 **THE COURT:** You may.

16 (Document handed up to the Court)

17 (Witness examines document)

18 **BY MR. CURRAN:**

19 **Q** All right, Ms. Fritz, do you have Exhibit 8197 in front of  
20 you?

21 **A** I do.

22 **Q** Are you ready for some questions on it?

23 **A** I need to review it for a moment.

24 **Q** Sure.

25 (Witness examines document)

## FRITZ - CROSS EXAMINATION / CURRAN

1     **A**     Okay.

2     **Q**     Okay.  So, let's start at the bottom of 8197, please.

3             (Document displayed)

4     **Q**     And, so, what you are doing here, Ms. Fritz, is you are --  
5     you have made some changes in Stephanie's email, and then you  
6     are forwarding it to some of your bosses.  Correct?

7             (Witness examines document)

8     **A**     I can't say that I've made changes to the email, but it  
9     does look like I'm forwarding her email with some additional  
10    comments.

11    **Q**     Okay.  The Wal-Mart price is corrected to 398, correct?

12    **A**     Oh, yeah.  It is corrected on here.

13    **Q**     Okay.  And then you are forwarding this to David Morrish,  
14    who I think you already said was your boss at the time, right?

15  
16    **A**     He was my boss at the time, yes.

17    **Q**     And then Jeff Peterson, who was he?

18    **A**     Jeff Peterson was our -- probably our VP of operations,  
19    retail operations, at the time.

20    **Q**     Okay.  So you were forwarding the competitive intelligence  
21    to them.  Right?

22    **A**     It appears that way, yes.

23    **Q**     And let's look at your message, okay, to them (As read):

24         "Here's the data that we have at this point on T-day for  
25         notebooks.  No other large concerns with other categories at

## FRITZ - CROSS EXAMINATION / CURRAN

1 this time but Circuit's ad is still not out there."

2 Do you see that, Ms. Fritz?

3 **A** I do.

4 **Q** So there, you were forwarding on the data that you had at  
5 this point, but Circuit City's ad had not been disseminated at  
6 all yet. Right?

7 **A** It appears that it was not, yet, yes.

8 **Q** So, wherever you got the Circuit City information, it  
9 wasn't from a Circuit City ad, right?

10 **A** Yeah, I don't recall where the information came from.

11 **Q** Okay. And then, continuing:

12 "Let us know if you have questions."

13 The next paragraph:

14 "On the Toshiba SKU..."

15 Or "sku" -- and by the -- that's, I think you said before,  
16 a stock-keeping unit or store-keeping unit, right?

17 **A** Yes.

18 **Q** Okay.

19 "...we still feel like we are well positioned as we have  
20 15-inch Bright View and DVD/RW. It doesn't negate the point  
21 that Toshiba who is supposed to be one of our best partners  
22 opted to give Circuit two low-priced aggressive SKUs with  
23 little differentiation in what we are offering and that HP  
24 partnered with Wal-Mart at the expense of further dragging  
25 down the Pavilion brand. We are following up on both of these

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1 topics with the vendors."

2 Okay. First of all, you wrote that, Ms. Fritz, right?

3 **A** It appears it's an email from me, yes.

4 **Q** So, so, you were upset with Toshiba and HP for providing  
5 particular products at particular prices to competitors of  
6 yours, right?

7 **A** I don't know if I would say "upset." Again, I don't  
8 recall the specific instance, but it does appear I was stating  
9 what the challenges were.

10 **Q** Okay. And, this indicates that you were -- you were at  
11 the time following up with both Toshiba and HP on this topic.  
12 Correct?

13 **A** It does indicate that, yes.

14 **Q** Okay. And then, in the top part of this email, Ms. Fritz,  
15 there's some further forwarding of the email to others.  
16 Correct?

17 **A** Yes, it looks that way.

18 **Q** Including to Mr. Ron "Bore"?

19 **A** "Boyer."

20 **Q** "Boyer."

21 **A** Boire.

22 **Q** And Michael Vitelli.

23 **A** Correct.

24 **Q** And then, Michael Vitelli forwards it on to someone else,  
25 and writes (As read):

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1 "Toshiba starting to change their posture with BM too!"

2 Is that what it says?

3 **A** It does.

4 **Q** And "BM" means BrandsMart, correct?

5 **A** I -- I couldn't say if that meant BrandsMart or not.

6 **Q** What does it mean? Do you know?

7 **A** I don't know.

8 **Q** Okay. Ms. Fritz, it's not unusual in internal emails like  
9 this to use abbreviations for other companies, right?

10 **A** Right.

11 **Q** Okay. So, for instance, at the bottom of this exhibit, in  
12 that competitive intelligence block we have talked about, "WM,"  
13 referring to Wal-Mart, that's not an unusual way to refer to  
14 Wal-Mart, is it?

15 **A** No.

16 **Q** Okay. And referring to Comp USA as "Comp," that's not  
17 unusual, right?

18 **A** Correct.

19 **Q** And "CC" for Circuit City, that's not unusual, right?

20 **A** Correct.

21 **Q** Just shorthand for the company names?

22 **A** Sometimes, yes.

23 **Q** All right. So one final question on this document.

24 So, the Wal-Mart price of 398, for the 56/40 combo (sic),  
25 do you see that?



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1     **A**     I do.

2     **Q**     Okay. Now, I would like you to look back at Exhibit 8140,  
3     which you have there, from a few moments ago. This was the  
4     June, '05 email.

5             (Document displayed)

6     **A**     Yes.

7     **Q**     And, that's when Stephanie reported in June having  
8     intelligence that Wal-Mart's price would be 399 or less instant  
9     on 256/40, 15-inch. Right?

10            (Witness examines document)

11    **Q**     Combo.

12    **A**     Yes, although this doesn't say "15-inch," but otherwise  
13    it's similar, yes.

14    **Q**     Okay. So, it looks like Stephanie's competitive  
15    intelligence back in June was pretty accurate. Right?

16    **A**     Actually, the units are very different. So, I -- I would  
17    say it wasn't very consistent.

18    **Q**     Okay. So, so, by "units," you're referring to Wal-Mart's  
19    forecast.

20    **A**     That are listed on these two sheets are very different.

21    **Q**     Right. So, in June, Stephanie was reporting they forecast  
22    of 100,000 units but then in November, she was reporting 60,000  
23    units.

24            (Document displayed)

25    **A**     Yes, it appears that way.

## FRITZ - CROSS EXAMINATION / CURRAN

1 Q Okay. Do you know, did Wal-Mart change their forecast as  
2 to that product?

3 A I don't recall.

4 Q All right. Ms. Fritz, so we have just seen the use of  
5 some competitive intelligence at Best Buy. Right?

6 A Yes.

7 Q So, the effort to gather and assemble competitive  
8 information, including on price and quantity, and the use of  
9 that information within Best Buy, for its own decision-making.  
10 Right?

11 A Can you repeat that?

12 Q Yeah. So, so, through the last three exhibits, we've seen  
13 the gathering of competitive information within Best Buy, the  
14 analysis of it, including competitors' pricing and quantity  
15 information, and the determination by Best Buy as to what its  
16 strategy should be.

17 A Yes. It was common practice for us to gather competitive  
18 information.

19 Q And to use it in your decision-making.

20 A And use it as an input -- one input into our  
21 decision-making.

22 Q Was that activity, in your judgment, consistent with  
23 Best Buy's code of business ethics?

24 A Yes.

25 Q Why?

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1     **A**     Because, again, we needed to make sure that we were  
2     understanding what was going on in the competitive market, but  
3     we were soliciting information or getting information that was  
4     available to others as well.

5             So, it was information that we were utilizing to -- as one  
6     input, into making sure that we were going to have the best  
7     price for our customers.

8     **Q**     Okay. But, now, you didn't know whether this competitive  
9     intelligence was known to others outside of Best Buy, did you?

10    **A**     No. We did not.

11    **Q**     But in any event, you were comfortable at the time and are  
12    comfortable now with the use of that kind of gathered-up  
13    competitive information?

14    **A**     I am, yes.

15    **Q**     Now, Ms. Fritz, you testified this morning a little bit  
16    about Best Buy's price-matching policy. Right?

17    **A**     I did, yes.

18    **Q**     And, I think you acknowledged to Mr. Silberfeld that it  
19    was appropriate in certain circumstances for Best Buy's store  
20    managers to -- or store employees -- to call their counterparts  
21    at a competitor store to verify pricing or availability of  
22    product. Right?

23    **A**     It was acceptable. It wasn't common practice. It was one  
24    of the ways that we would validate a price. Yes.

25    **Q**     Okay. So, so, correct me if I'm wrong, is this the

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1 dynamic that happens?

2 A customer comes into a Best Buy store, and says, "I have  
3 an ad that shows a lower price on a product that's on your  
4 shelves here at Best Buy, and I'd like Best Buy to match or  
5 beat that price."

6 Is that how the dynamic starts?

7 **A** There's a lot of different scenarios, but that's one of  
8 them, yes.

9 **Q** Okay. And under what circumstances would it be  
10 appropriate under Best Buy policy for the Best Buy employee or  
11 store manager or cash register person or whatever to call the  
12 competitor store?

13 **A** The only time that would need to happen is if we didn't  
14 actually have the ad, couldn't access it online, and it was  
15 really just -- if it was the customer saying it without us  
16 understanding it.

17 So the majority of the time, customers would come in with  
18 the ad in hand, or today they come in with their smartphone in  
19 hand, and that's all we need to match the price.

20 **Q** Okay. But, so under Best Buy policy, it was on occasion  
21 appropriate for a store manager to have a direct communication  
22 with a competitor store about the price that the competitor  
23 store was selling a product at.

24 **A** I would say it wasn't always a manager, but again, it was  
25 appropriate on a case-by-case basis to validate that price, not

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1 to have a discussion about it, but to validate it, in the  
2 purposes of being able to honor that for the customer.

3 **Q** Okay. And by "validate it," you mean to verify or confirm  
4 it?

5 **A** Yes.

6 **Q** So it was a way to make sure that the information the  
7 customer was saying was accurate.

8 **A** It was -- it was validating what the customer was telling  
9 us was actually out there in the market somewhere else, and we  
10 hadn't seen it in ad or online.

11 **Q** And that was -- that's been long-time established Best Buy  
12 corporate policy, right?

13 **A** It's been part of the policy. Again, it's been very  
14 rarely utilized, especially today, with online and smartphones.

15 **MR. CURRAN:** Your Honor, at this time I would like to  
16 use the exhibits that have been stipulated into evidence  
17 earlier today, beginning with 5607. And I have copies of that  
18 to hand around.

19 (Document displayed)

20 **MR. CURRAN:** May I approach the witness, Your Honor?

21 **THE COURT:** You may.

22 (Witness examines document)

23 **BY MR. CURRAN:**

24 **Q** Ms. Fritz, do you have the document Exhibit 5607 in front  
25 of you?

## FRITZ - CROSS EXAMINATION / CURRAN

1     **A**     I do.

2     **Q**     Okay. And, you're not copied on this document. Correct?

3     **A**     No, I do not appear to be.

4     **Q**     I have some questions to ask you about the text of this  
5     email. Philip Britton wrote this email, correct?

6     **A**     It appears to have come from Phil, yes.

7     **Q**     Okay. And, we've already talked about Mr. Britton. He  
8     was involved in the competitive field unit. Correct?

9     **A**     Correct.

10    **Q**     So, he was one of the Best Buy employees dedicated to  
11    gathering up competitive information. Right?

12    **A**     Correct.

13    **Q**     And I think you referred to Mike Ray earlier in your  
14    testimony today. Correct?

15    **A**     I did.

16    **Q**     I think you told me that at one point, at least, he was  
17    the head of competitive intelligence gathering.

18    **A**     Correct.

19    **Q**     And he's the addressee of this email, correct?

20    **A**     It looks that way, yes.

21    **Q**     Okay. So together, Mr. Britton and Mr. Ray are two of the  
22    Best Buy employees principally responsible for competitive  
23    intelligence. Right?

24    **A**     Yes.

25    **Q**     Okay. And, in this email, Mr. Britton writes to Mr. Ray

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1 as follows (As read):

2 "Here's a glimpse into Circuit's next 90 days."

3 And, Ms. Fritz, in Best Buy parlance, "Circuit" means  
4 "Circuit City," right?

5 **A** I would assume so, yes.

6 **Q** Okay. Continuing:

7 "It is a Home Theater view. We do have a high degree of  
8 confidence in this information. We do anticipate adding to  
9 this as Friday progresses, but it's a good look of what we  
10 have at the time of this writing. I cannot stress how much  
11 the T3 Field Competitive Specialist Team contributed to this  
12 view. They put in a 12-hour plus day, visited Circuit after  
13 Circuit, and used all of their contacts sentence (and a few  
14 sneaky tricks) to get this information. It was a great group  
15 effort."

16 So, Ms. Fritz, my question for you is: Is this email  
17 (Indicating) consistent with the type of competitive  
18 intelligence emails that you saw during the relevant period in  
19 your employment at Best Buy?

20 **A** We would get recaps from them. I have not looked through  
21 the document to be able to say it was -- it's consistent or  
22 not. From an email perspective, I would say no.

23 **Q** No, it's not typical?

24 **A** No.

25 **Q** Okay. It's unusual?

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1 **A** I think it's unusual, in terms of the tone of the email.

2 **Q** Do you know what's being referred to by "a few sneaky  
3 tricks"?

4 **A** I do not.

5 **Q** Do you know what's being referred to by "used all of their  
6 contacts"?

7 **A** I do not.

8 **Q** Okay. Were you aware of whether or not Mr. Britton,  
9 Mr. Ray, and others in the competitive field unit had contacts  
10 at competitor stores?

11 **A** I was not aware.

12 **Q** In your judgment, would the maintenance of contacts at  
13 competitor stores by Best Buy people be consistent with the  
14 Best Buy code of ethics?

15 **A** I would say no.

16 **MR. CURRAN:** Next, Your Honor, I would like to hand  
17 out 5603.

18 May I approach the witness, Your Honor?

19 **THE COURT:** You may.

20 (Document handed up to the Court)

21 (Witness examines document)

22 (Document displayed)

23 **BY MR. CURRAN:**

24 **Q** Ms. Fritz, do you have Exhibit 5603 in front of you?

25 **A** I do.



## FRITZ - CROSS EXAMINATION / CURRAN

1 Q Ms. Fritz, you are not on this email either, are you?

2 A I don't appear to be.

3 I'm just reading through it.

4 (Witness examines document)

5 A Okay.

6 Q Ms. Fritz, I'm going to focus on a couple of specific  
7 parts of this document.

8 Beginning with on the first page, there's an email from  
9 Mike Green. Do you see that?

10 A I do.

11 (Document displayed)

12 Q Do you know Mike Green, or did you at the time?

13 A I do not.

14 Q But based on his signature block here, he appears to be a  
15 district marketing coordinator in Florida. Correct?

16 A Appears that way.

17 Q And Ms. Fritz, he writes (As read):

18 "I just checked with the Dadeland CC today..."

19 That's a reference to a Circuit City store, correct?

20 A I would assume so.

21 Q Okay (As read):

22 "And they are running with the offer like we are 'til the end  
23 of July even though their signage says expires 7/4."

24 Do you see that, ma'am?

25 A I do.

## FRITZ - CROSS EXAMINATION / CURRAN

1 Q And this email is dated July 7, correct?

2 A Yes.

3 Q So this is talking about Circuit City's pricing in this  
4 Dadeland store through the end of July. Correct?

5 A It actually says their "offer." Doesn't say their  
6 "pricing."

7 Q Okay. Running with their offer, through the end of July?

8 A That's what it says.

9 Q And, what do you understand "offer" to mean in this  
10 context?

11 A I don't recall this specific instance, but "offer" could  
12 be a promotion. It could be a number of things.

13 Q Okay. And then, continuing (As read):

14 "Also while talking to one of the managers he informed me that  
15 their corporate office is telling the regional, district and  
16 store management teams that Best Buy is starting an all out  
17 pricing war to put CC out of business and that they will be  
18 launching pre-emptive strikes in the form of aggressive  
19 financing, promotions and floor pricing and that some stores  
20 have been told to kick out any Best Buy employed shoppers if  
21 they think they are writing or even recording prices. This  
22 came from a manager that has known me for 8 years."

23 Do you see that, ma'am?

24 A I do.

25 Q So Mr. Green, here, is reporting on a discussion he had

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1 with one of the managers at the Dadeland Circuit City.

2 Correct?

3 **A** It appears that way, yes.

4 **Q** In your judgment, is this, the conduct reflected in this  
5 email, consistent with Best Buy's ethics policy, ethics code?

6 **MR. SILBERFELD:** Objection, Your Honor. Vague as to  
7 which conduct.

8 **THE COURT:** Can you specify?

9 **MR. CURRAN:** Yes.

10 **BY MR. CURRAN:**

11 **Q** Ms. Fritz, the second sentence of the email has a  
12 reference to "...while talking to one of the managers he  
13 informed me..." and then it continues on.

14 In your judgment, is it consistent with Best Buy's code of  
15 ethics for Mr. Green to have been talking with one of the  
16 managers at the Dadeland Circuit City about the subjects  
17 reflected in this email?

18 **A** I would say it was not common practice, no.

19 **Q** That -- my question was, was it consistent with Best Buy's  
20 code of ethics?

21 **A** I would say no.

22 **Q** Why not?

23 **A** Because part of our code of ethics is to make sure that  
24 we're looking at information in terms of the competitive  
25 context, and not engaging in conversations.

## PROCEEDINGS

1 other counsel. And so this now crosses that line.

2 **THE COURT:** And what is the point of your  
3 questioning? What are you trying to get from this witness?

4 **MR. CURRAN:** There are a number of points that I  
5 intend to elicit, your Honor.

6 Okay. First of all, I think the witness said under direct  
7 examination by Mr. Silberfeld that Best Buy only wants to do  
8 business with ethical suppliers. And it turns out Samsung is  
9 now their Number 1 relationship. The fact of the  
10 settlement -- I don't intend to get into financial terms, the  
11 settlement amount paid or the value of the Samsung experience.  
12 But the fact that Best Buy has settled with Samsung and has  
13 cooperation terms requiring Samsung to cooperate with Best Buy  
14 in this litigation, including through the witnesses that we've  
15 already heard live in this courtroom, and that Best Buy got  
16 these -- the Samsung Experience, which is now a huge  
17 partnership between the companies, I think that's all relevant  
18 to the credibility of this witness and other witnesses in the  
19 case.

20 **THE COURT:** Doing business with bad guys? Is that  
21 your point?

22 **MR. CURRAN:** Yeah, that's part of it.

23 I also see that as inconsistent with the Best Buy code of  
24 ethics that has been a centerpiece of my examination.

25 **MR. FREITAS:** I have two points to add, your Honor.